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**IN THE
COURT OF APPEALS OF INDIANA**

MARY E. TAYLOR,

Appellant,

vs.

CARL R. TAYLOR,

Appellee.

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No. 55A01-0609-CV-415

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Christopher L. Burnham, Judge
Cause No. 55D02-0606-DR-193

March 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Mary E. Taylor (“Mother”) appeals the trial court’s order emancipating her and Carl Taylor’s (“Father”) nineteen-year-old daughter, Bridgette, and failing to apportion college expenses for Bridgette.

We affirm in part, reverse in part and remand.

ISSUES

1. Whether the trial court erred in emancipating Bridgette.
2. Whether the trial court erred in failing to apportion college expenses.

FACTS

Bridgette was born on April 21, 1987. Father and Mother divorced on October 16, 2003, and the trial court ordered Father to pay child support. In March of 2004, the trial court held Mother “in contempt for failure to ensure visitation w[ith]” Bridgette. (App. 8). On September 20, 2005, Father filed a petition to emancipate Bridgette. On December 7, 2005, Mother filed a “Petition for Modification,” seeking payment of Bridgette’s college expenses. (App. 9).

On July 26, 2006, the trial court held a hearing on both Father’s and Mother’s petitions. Father testified that he thought the order entered in March of 2004 “revised his parenting time” with Bridgette to “[o]ne day on the weekend . . . for a few hours or something,” and that since that time, he had exercised visitation “[m]aybe three weekends.” (Tr. 9). Nonetheless, according to Father, Bridgette had visited since the birth of Father’s new baby. Father further testified that he did not attend Bridgette’s high school graduation “[b]ecause [Bridgette] didn’t give [Father’s family] an invitation.” (Tr.

21). Father, however, admitted that “[Bridgette] sent [Father’s family] a letter saying [they] were all invited.” (Tr. 21). Father testified that despite Bridgette’s invitation, he chose not to attend her graduation ceremony because Bridgette “came the day before graduation and said she only had one ticket” (Tr. 21).

Bridgette and Mother testified that Bridgette graduated from high school in May of 2005, and Bridgette then “went to University of Indianapolis for a semester, and . . . to Ball State University second semester.” (Tr. 44). Bridgette testified that she is “the one that’s dealing with all of [her] financial aid.” (Tr. 46).

Mother’s counsel introduced into evidence an award letter, dated June 20, 2006, from Ball State University. The award letter provided as follows:

YOUR AWARD PACKAGE is based on your financial need as determined from the information you provided on the Free Application for Federal Student Aid (FAFSA). Availability of funds is subject to federal and state appropriations. RECEIPT OF ADDITIONAL FUNDS FROM OTHER SOURCES COULD AFFECT THIS AWARD PACKAGE.

(App. 13). The award letter stated that for the 2006-2007 year, Bridgette would be eligible for financial aid in the amount of \$17,100.00, which included \$2,500.00 in grant assistance, \$2,625.00 in federal subsidized loans, and \$11,975.00 in federal parent loans for undergraduate students.

Bridgette acknowledged that she did not want to release her financial information to Father because he “doesn’t really have anything to do with [her] schooling right now”; Father “wasn’t even talking to [Bridgette] or getting a hold of [her]” (Tr. 51). Bridgette testified that she would be “fine” with releasing her financial information to Father if he “start[ed] to try and participate in [her] schooling” (Tr. 51, 52).

After hearing testimony, the trial court found, in pertinent part, the following:

The Court does find that the child technically was emancipated in that she turned 18, graduated from high school, went to college, but failed to maintain any contact with her father, failed to provide information to her father regarding college expenses which would allowed [sic] him to make appropriate modifications in the Child Support Order to make adjustments for contributions for college expenses, so Bridgette has to take some . . . accountability here as well for what's happening financially. So what I'm saying is that the Petition for Emancipation is granted effective September 20, 2005. [Father]'s obligation to pay a weekly support for Bridgette ends on that date. . . . The Petition for Modification that was filed . . . requesting post-secondary education expenses cannot be determined at this time because I have . . . insufficient information. . . . And with regard to [the] request for college expenses . . . what's gonna have to happen for there to be an intelligent decision on this, Bridgette's gonna have to provide bursar documents to show exact expenses. This award letter . . . is simply that. It says this is what the college thinks you'll get. They don't . . . know until it actually is paid out. What we're looking for here is bursar statements And that's the kind of information we need to have to make an intelligent decision on what percentage contribution each parent's gonna make. Now, there is no provision for 100 percent payment of college expenses by parent[s]. Okay? The Court has to make a reason [sic] decision on dividing up the cost of these expenses taking into consideration grants that the child has received So what I'm saying is I'm denying your request for modification at this time. You can renew that request once you have more detailed information that allows me to make an informed decision.

(Tr. 59-61).

On August 14, 2006, the trial court issued its order, which read in pertinent part, as follows:

3. Respondent's Petition to Emancipate Bridgette Taylor is granted and Bridgette Taylor is emancipated as of September 20, 2005
4. That the Respondent is entitled to a credit for overpayment of support made since September 20, 2005 in the amount of \$5,764.00

* * *

6. Petitioner's Petition for Modification and order for post-secondary educational expenses is denied at this time.

(App. 11).

DECISION

Decisions regarding child support are generally left to the discretion of the trial court. Absent an abuse of discretion or a determination that is contrary to law, a court on appeal will not disturb a trial court's order modifying child support. In reviewing orders modifying child support, we consider only the evidence and reasonable inferences favorable to the judgment. When reviewing a challenge to an order apportioning college expenses, we apply a "clearly erroneous" standard. We will affirm the trial court unless the decision is clearly against the logic and effect of the facts and circumstances which were before it.

Gilbert v. Gilbert, 777 N.E.2d 785, 790 (Ind. Ct. App. 2002) (internal citations omitted).

1. Emancipation

Mother first contends that the trial court erred in emancipating Bridgette and thus modifying Father's child support obligation. We agree.

Regarding the termination of child support and emancipation of a child, Indiana Code section 31-16-6-6 provides as follows:

(a) The duty to support a child under this chapter ceases when the child becomes twenty-one (21) years of age unless any of the following conditions occurs:

(1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.

* * *

(3) The child:
(A) is at least eighteen (18) years of age;

(B) has not attended a secondary or postsecondary school for the prior four (4) months and is not enrolled in a secondary or postsecondary school; and (C) is or is capable of supporting himself or herself through employment. In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist.

“Under exception (1), the relevant inquiry is not whether the child is capable of supporting herself but whether the child is in fact supporting herself without the assistance of her parents.” *Willard v. Peak*, 834 N.E.2d 220, 223 (Ind. Ct. App. 2005), *reh'g denied*. Furthermore, a child's emancipation does not necessarily alter a parent's obligation to pay for college expenses because Indiana Code section 31-16-6-6(a) “permits the continuation of educational expenses beyond emancipation.” *Cure v. Cure*, 767 N.E.2d 997, 1002 (Ind. Ct. App. 2002).

“What constitutes emancipation is a question of law, but whether there has been an emancipation is a question of fact.” *Id.* at 1001. Emancipation of a child cannot be presumed but must be established by competent evidence. *Id.* “The burden of producing such competent evidence falls on the party asserting emancipation.” *Id.*

The evidence presented showed that Bridgette was nineteen years old as of the date of the hearing. Father testified that Bridgette “was working at JCPenny the last time [he] heard,” but he “ha[d] no idea” what she earned or how many hours per week she worked. (Tr. 23). Father testified that he “didn't have an idea where [Bridgette] was enrolled [in school], if she enrolled or anything” (Tr. 11). Bridgette, however, testified that she was in fact enrolled in college during the 2005-2006 school year, after graduating from high school in May of 2005.

Father failed to present any evidence demonstrating that Bridgette was emancipated as provided by Indiana Code section 31-16-6-6. Thus, we find that the trial court erred in granting Father's petition to emancipate Bridgette.¹ Accordingly, we also hold that the trial court erred in terminating Father's child support payment as to Bridgette and in crediting Father "for overpayment of support made since September 20, 2005" We therefore remand to the trial court with instructions to reinstate Father's child support obligations effective from September 20, 2005, with the understanding that the trial court shall reduce child support for Bridgette that (1) is duplicated by any educational support order; and (2) would otherwise be paid to the custodial parent. *See* Ind. Code § 31-16-6-2; *Carter v. Dayhuff*, 829 N.E.2d 560, 566 (Ind. Ct. App. 2005) (providing that where a trial court orders payment of both child support and college

¹ We note that the trial court found Bridgette to be emancipated because she had allegedly repudiated her relationship with Father, thereby relieving Father of his child support obligation. "Indiana law recognizes that a child's repudiation of a parent – that is, a *complete* refusal to participate in a relationship with his or her parent – under certain circumstances will obviate a parent's obligation to pay certain expenses, including college expenses." *Staresnick v. Staresnick*, 830 N.E.2d 127, 132 (Ind. Ct. App. 2005) (emphasis added). Repudiation, however, is not a basis for emancipation pursuant to Indiana Code section 31-16-6-6. Furthermore, terminating a parent's child support obligation based on a child's repudiation of a parent is contrary to law. *Bales v. Bales*, 801 N.E.2d 196, 200 (Ind. Ct. App. 2004), *trans. denied*. A child's repudiation of a parent does not and cannot obviate a parent's obligation to pay child support. *Id.* at 199. Unless a child is emancipated, a parent's duty to pay child support continues, "regardless of the lack of contact, communication, or emotional connection between" the parent and child. *See id.*

Even if child support obligations could be terminated due to the repudiation of the parent-child relationship or if Father only had argued repudiation should relieve him of paying Bridgette's college expenses, we find no evidence in this case that Bridgette repudiated her relationship with Father. The evidence presented shows that Bridgette visited with Father and invited him to her high school graduation ceremony. Father, however, declined to attend the ceremony. *See Loden v. Loden*, 740 N.E.2d 865, 870 (Ind. Ct. App. 2000) (finding no repudiation where evidence was presented that the child sought to reestablish a relationship with her father by sending him an invitation to her high school graduation but the father failed to acknowledge or respond to the invitation). Furthermore, although Bridgette had not divulged her financial information to Father, she conceded that she would be willing to share the information with Father if he became involved in her schooling.

expenses, "the trial court must consider full or partial abatement of the basic child support obligation").

2. College Expenses

Mother contends that the trial court erred by failing to order Father to pay a portion of Bridgette's post-secondary educational expenses. Taking into account a child's aptitude and ability, the child's reasonable ability to contribute to educational expenses, and the ability of each parent to meet these expenses, a trial court may order payment of college expenses. *See* I.C. § 31-16-6-2. Regarding the awarding post-secondary education expenses, the Indiana Child Support Guidelines provide:

If the Court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student.

* * *

A determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, supplies, student activity fees and the like. Room and board will also be included when the student resides on campus or otherwise is not with the custodial parent.

Ind. Child Support Guideline 6.

Here, the trial court heard evidence regarding the incomes of Father and Mother. Mother also presented evidence of the amount of financial aid for which Bridgette would be eligible for the 2006-2007 school year. According to the award letter, Bridgette would be eligible for \$17,100.00 of financial aid, in the form of loans, parents' loans and grants.

Additionally, Mother submitted a post-secondary education worksheet, listing total education costs for Bridgette at \$7,000.00.² Given the discrepancy between the costs listed in the worksheet and the amounts available in financial aid, we agree that the parties submitted insufficient evidence for the trial court to properly apportion college expenses between Mother, Father and Bridgette. We therefore remand this issue to the trial court for a hearing, during which the parties may present additional evidence of Bridgette's college expenses.³

Affirmed in part, reversed in part and remanded.

BAKER, J., and ROBB, J., concur.

² This amount included \$5,000.00 for tuition, \$1,500.00 for room and board, and \$500.00 for books and fees. It also indicated that Bridgette would be living at home for twenty-one weeks of the year.

³ Furthermore, if Father presents evidence that Bridgette has completely refused to participate in a relationship with Father, the trial court may determine upon remand that it is appropriate to relieve Father of any obligation to contribute toward Bridgette's educational expenses.